

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Petition for)	
Redetermination of)	DOCKET NO. 19805
)	
[REDACTED],)	DECISION
)	
Petitioner.)	
_____)	

On August 24, 2006, the Sales and Use Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination [Redacted] (taxpayer) asserting an amusement device permit penalty totaling \$10,400 for the registration period July 1, 2006, through June 30, 2007.

The taxpayer protested the Notice of Deficiency Determination in a letter dated October 23, 2006, and later requested an informal hearing, which was held on February 15, 2007.

After reviewing the audit file, considering the amusement device tax compliance history of the taxpayer, and allowing for circumstances discussed below, the Commission issues this decision reducing the penalty by one-half to \$5,200.

Background

Among its other business activities, the taxpayer has coin-operated amusement devices at various locations [Redacted]. It retains ownership of the machines and periodically empties them of their proceeds while checking that they function properly. Idaho Code § 63-3623B imposes upon owners or operators of amusement devices an annual permit fee in lieu of sales tax remitted from each device's revenue stream. Additionally, the statute imposes a \$50 penalty per device for the owner/operator's failure to buy and display evidence of permits (i.e., state-issued decals) on each functioning machine in a timely manner. Permits for operational machines are to be renewed and decals affixed no later than July 1 of each year.

In July of 2006, the Bureau's audit staff visited several business locations where the taxpayer owned and operated amusement devices. Finding machines with outdated decals, the Bureau prepared a deficiency. Over a few weeks' duration, the deficiency was amended to reflect more machines that were found to be without current decals. The final deficiency did not include the permit fees because, by the time it was issued, the taxpayer had purchased a sufficient number of decals to cover the 208 machines visually inspected and found to be without the mandatory decals. The deficiency was issued only for the non-compliance penalty.

Facts and Analysis

The authority for the Commission's actions in this case, Idaho Code § 63-3623B, reads in relevant part:

63-3623B. Amusement Devices. – ... (b) In lieu of the imposition of sales tax upon the use of the amusement device, the owner or lessee or person having the right to impose a charge for use of the amusement device must pay an annual permit fee of thirty-five dollars (\$35.00) for each such device.

(c) Upon payment of the permit fees, the state tax commission shall issue the permit(s) to the owner or lessee or person having the right to impose a charge for use of the amusement device. ...

(d) All applications for a permit renewal must be made to the state tax commission on or before July 1 of each year. ...

(e) The state tax commission shall adopt a uniform system of providing, affixing and displaying official decals, labels or other official indicia evidencing that the owner, lessee, or person having the right to impose a charge for the use of the amusement device has paid the annual permit fee for such amusement device. ...

(f) In addition to the penalties set forth above and in section 63-3634, Idaho Code, the state tax commission may assess the following penalties:

(1) If any owner, lessee, or person having the right to impose a charge for the use of any coin, currency or token operated amusement device in this state shall violate any provision of this section or any rule promulgated under this section, the commission may assess penalties, of fifty dollars (\$50.00) for each device for failure to pay timely permit sticker fees. ...

(g) The state tax commission shall impose the penalties provided in this section by a notice of deficiency determination in the

manner provided in section 63-3629, Idaho Code, which shall be subject to review as provided in section 63-3631, Idaho Code.)

Commission records show that the taxpayer's purchase of decals for the current registration period beginning July 1, 2006, occurred after the deadline. The first occurred on July 14, 2006; the second occurred on July 27, 2006; and two additional purchases as of this writing occurred in August and October of 2006.

In its letter of protest, the taxpayer states it does not purchase all required decals at once because the route men who service the machines have a tendency to lose them. The letter contains other defenses for missing the registration deadline [Redacted].

The taxpayer does not recall receiving a reminder notice from the Commission and states that historically it has the decals affixed on time each year and has continued to buy decals throughout the year as additional amusement devices are placed into service. While the Commission's records of the taxpayer's purchases show some small decal purchases that are likely for amusement devices that come on line well beyond the first day of the registration period, the main declaration of the statement is at odds with the facts. Historically, the taxpayer has not purchased and affixed the decals in a timely manner for its numerous operating machines.

The statute cited previously says, "the state tax commission *may* assess the following penalties...." (*id.*, at (f), emphasis added.) Thus, it is within the discretion of the Commission to determine whether the penalty asserted by an auditor is to be upheld, abated, or eliminated.

In making the determination to reduce the penalty by one-half in this case, it considered the following information.

Records show that for the past three registration years, including the one under audit, the taxpayer made a series of large dollar decal purchases, all of which were too late to be in compliance. The taxpayer has between 450 and 550 machines in service and should buy all decals

for operating machines prior to the start of the registration year. The pattern of purchases suggest that the business buys the decals in staggered blocks due to the cost, and this was confirmed during the informal hearing.

Though the taxpayer's representative seemed unaware that July 1 was a deadline, the Bureau's audit staff sent prior notice in 2006 with the following message:

Renew Decals by July 1

Amusement decals must be renewed on or before July 1 of each year.* All amusement devices in service on July 1 are required to have an official decal near the currency slot. Decals are available from the Idaho State Tax Commission (sic).

Starting July 5, 2006, Tax Commission employees will visit amusement device locations throughout Idaho to verify that new decals have been attached to all devices. The owner of any amusement device without a current decal will be subject to a \$50 penalty plus the \$35 decal fee.

* See Idaho Code section 63-3623B and Idaho Sales and Use Tax Administrative Rule 109.

(Reference Idaho State Tax Commission correspondence to amusement device permit holders.)

Additionally, the Revenue Operations Bureau of the Commission routinely sends reminders to permit holders each year prior to the registration deadline. While the taxpayer states that in past years decals have not been available by the registration deadline, the Commission has no evidence that this happened.

Thus, the taxpayer's written contention that it does not buy all decals at once because of the incompetence of the route men is at odds with remarks made at the informal hearing. Further, the taxpayer has been sufficiently and timely notified, and the decals have been available for purchase.

Finally, the Commission considers the taxpayer's principal employee's illness and the office relocation to be mitigating. It therefore exercises its discretion under the relevant statute and reduces the penalty to one-half of the amount shown on the August 24, 2006, Notice of Deficiency

Determination.

WHEREFORE, the Notice of Deficiency Determination dated August 24, 2006, is hereby ADJUSTED and as ADJUSTED is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES HEREBY ORDER that the petitioner pay a penalty of \$5,200 for the registration period beginning July 1, 2006.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the petitioner's right to appeal this decision is included with this decision.

DATED this _____ day of _____, 2007.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2007, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]
[REDACTED]

Receipt No.
